IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 1029 of 2005

IN

NOTICE OF MOTION NO. 2892 OF 2002

IN

SUIT NO. 3561 OF 1995

Noshir P. Khambatta & Ors. .. Appellants

versus

Powai Housing Development

Private Limited & ors. .. Respondents

...

Mr.Pratik Sakseria a/w Mr.Murtaza Ali i/b M/s.Law Charter for the appellant.

CORAM : R.M. LODHA AND

D.G. KARNIK, JJ

DATED : 28th November 2005.

P.C.:

1. Heard.

2. The perusal of the impugned order shows that the learned Motion Judge considered the Notice of Motion as if the only prayer was for placing the matter for ex-parte decree for want of written statement. As a matter of fact, in the notice of motion, two prayers were made. They read thus :

> (a) That the suit be placed on board for an ex-parte decree against the Defendants for want of Written Statement and that this Hon'ble Court be pleased to pass an ex-parte decree against the Defendants for want of Written Statement;
>
> (b) In the alternative to prayer(a) above, this Hon'ble Court be pleased to expedite the hearing of the suit and direct that the same be placed on board for hearing and final disposal peremptorily on a specified date and that the hearing thereof be concluded expeditiously.

3. The prayer for expeditious hearing of the suit was made on account of one of the plaintiffs being above 65 years of age and as per the High Court circular (Exhibit-B), in the matters where one of the parties has crossed 65 years of age, precedence in hearing deserves to be given.

4. In so far as prayer clause (a) of the Notice

of Motion is concerned, obviously when the written statement has been filed by the defendant nos.2 and 3, the question of setting down the suit for an ex-parte decree did not arise.

5. As regards the expeditious hearing of the suit, we find that the age of the first plaintiff and the circular (Exhibit-B) were not adverted to by the learned Motion Judge. However, instead of entertaining the appeal, we grant liberty to the plaintiffs to apply afresh for expeditious hearing of the suit in the light of the fact that the first plaintiff has crossed the age of 65 years and the High Court circular provides for precedence to the matters being given where one of the parties has crossed 65 years.

6. Appeal is disposed of with the aforesaid observations.

(R.M. LODHA, J)

(D.G. KARNIK, J)